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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
MAY 15 2015
DOCKETED BY

SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

ORIGINAL

IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY, INC. FOR (1) APPROVIAL OF A NET METERING TARIFF AND (2) PARTIAL WAIVER OF THE NET METERING RULES.

Docket No. E-01933A-15-0100

VOTE SOLAR'S BRIEF IN SUPPORT OF DISMISSAL

On March 25, 2015, Tucson Electric Power Company ("TEP" or "the Company") filed an application requesting that the Arizona Corporation Commission ("Commission") approve a new net metering tariff and partial waiver of the Commission's net metering rules. In its April 28, 2015 procedural order, the Commission directed the parties to file briefs addressing whether TEP's application should be dismissed, and set oral argument on the issue for June 10.

The Commission should dismiss TEP's application for two reasons. First, TEP's concerns about purported under-recovery of costs and cost shifting due to increases in solar distributed generation ("DG") should be addressed in a rate case, where a comprehensive examination of cost allocation across all customer classes and rate designs of all types can occur and the full value of DG can be considered. Second, the relief TEP seeks is barred by the Commission's net metering rules, and a waiver is improper.

I. TEP'S APPLICATION SHOULD BE DISMISSED BECAUSE IT RAISES RATE DESIGN ISSUES THAT THE COMMISSION SHOULD ADDRESS IN A RATE CASE.

The number of solar DG systems in TEP's service territory has grown significantly in recent years. Application at 4. TEP claims that this growth has resulted in increases in unrecovered fixed costs and cost shifting under the current net metering program. *Id.* at 1, 5. To partially address these issues, TEP has asked the Commission to approve a new tariff for net metering customers and a partial waiver of the Commission's net metering rules.

Regardless of their merits, TEP's claims concern core issues of rate design, such as how the Company recovers costs and how costs are shared among ratepayers. These issues should be addressed in a full rate case, where the Commission will be able to holistically examine them across TEP's various generation resources, customer classes and customer programs. Further, in a full rate case, the Commission can analyze all of TEP's costs, alternative cost of service methodologies, and rate design opportunities, which TEP does not present in this case.

The Company's application focuses on claimed cost-shifting between DG and non-DG customers. However, efforts to improve equity in rate design should not be accomplished by singling out one segment of future customers and radically restructuring the rate tariff under which they would take service in a limited context. A full analysis of values and costs across customer classes and services is needed to ensure just and reasonable rates. *See Scates v. Ariz. Corp. Comm'n*, 578 P.2d 612, 614 (Ariz. Ct. App. 1978) (setting aside a commission order approving a rate increase that was considered "solely on the basis of evidence reflecting the costs of these particular services"). This is best accomplished in a rate case.

When presented with similar issues regarding Arizona Public Service Company's net metering program, the Commission correctly recognized that cost shifting concerns under net metering should be addressed in the utility's next rate case, based on a comprehensive cost-benefit analysis of DG resources. As the Commission explained, "addressing the net metering cost-shift issue would benefit from a detailed analyses of the costs and benefits of distributed generation systems, and therefore, it is in the public interest to consider these matters further in Arizona Public Service Company's next general rate case."[1] Moreover, in the pending Trico Electric Cooperative, Inc. ("Trico") net metering tariff proceeding, Staff explained that "the under-recovery of fixed costs is fundamentally a rate design issue... and rate design issues are best handled in rate cases where more tools are available."[2] Similarly here, TEP's concerns regarding cost recovery and cost shifting should be addressed in the Company's next rate case, after a full accounting of the costs and benefits of DG and examination of cost recovery and allocation across customer classes.

Addressing TEP's cost recovery concerns in a rate case is consistent with past practice. In the Company's most recent rate case, the Commission approved TEP's Lost Fixed Costs Recovery ("LFCR") mechanism, which is designed to allow TEP to recover a portion of fixed costs associated with reduced sales due to energy efficiency and DG.[3] Through the rate case

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[1] Decision No. 74202, Conclusions of Law, ¶3. Pursuant to this decision, Commission Staff opened a generic docket on January 24, 2014 "for the purposes of gathering Stakeholder input and to help inform future Commission policy on the value and costs that Distributed Generation brings to the grid." Memorandum Opening New Docket, Docket No. E-00000J- 14-0023. The Value and Cost of Distributed Generation docket remains open and could help inform rate case decisions regarding appropriate rate designs and structures. *See, e.g.,* TEP and UNSE's Feb. 14 Comments at 1 ("This docket offers an opportunity to assess the quantifiable benefits that can be attributed to DG *in a ratemaking context* while also detailing DG costs and complications that can contribute to cost shifts and/or higher rates for utility customers.") (emphasis added).

[2] Staff's Brief Pursuant to April 3, 2015 Procedural Order ("Staff's Trico Brief") at 4 (April 10, 2015), Docket No. E-01461A-15-0057.

[3] Decision No. 73912 at 26.

process, the LFCR was selected as the method to address certain fixed cost recovery concerns, further demonstrating that a rate case is the proper forum to address the types of concerns TEP presents in its application.[4]

Finally, although framed as a tariff restructuring, TEP's proposal increases energy costs for a narrow customer segment: new DG customers. The proposal would replace an energy credit equal to retail rates (starting at roughly 9 cents per kWh for residential customers)[5] with a bill credit equal to a Renewable Credit Rate (currently set at 5.84 cents per kWh).[6] By reducing the compensation TEP would pay DG customers for the energy they generate onsite and export to TEP's distribution grid, the Company's proposal effectively increases rates for those customers. The limited analysis TEP provides to address broad issues of cost recovery and allocation is insufficient and TEP's application should be dismissed.

II. TEP'S APPLICATION SHOULD BE DISMISSED BECAUSE IT WOULD VIOLATE THE COMMISSION'S NET METERING RULE AND A WAIVER IS IMPROPER.

TEP frames its proposal as a "new" or "restructured" net metering tariff. Application at 1-2. However, TEP's proposal conflicts with the basic meaning of net metering and would effectively end net metering for new DG customers in its service territory. Because TEP's proposal fails to comply with the Commission's net metering rule and a waiver from this rule is improper, TEP's application should be dismissed.

The Commission's net metering rule provides:

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[4] Further, it appears that implementation of TEP's proposed tariff and the existing LFCR could result in over-recovery of fixed costs.

[5] *See* TEP's Residential Electric Service (R-01) Tariff Sheet, available at https://www.tep.com/doc/customer/rates/101%20-%20R%2001.pdf.

[6] Application at 1, n. 1.

> 'Net Metering' means service to an Electric Utility Customer under which electric energy generated by or on behalf of that Electric Utility Customer from a Net Metering Facility and delivered to the Utility's local distribution facilities *may be used to offset electric energy provided by the Electric Utility to the Electric Utility Customer during the applicable billing period.*

A.A.C. R14-2-2302(11) (emphasis added). Net metering thus allows customers to net the energy they export to the grid (*i.e.* DG energy produced above consumption) against the energy they purchase from their utility. If the amount of energy the utility provides to the customer is greater than the amount of energy the customer exports during a billing period, the customer pays for the difference. A.A.C. R14-2-2306(C). On the other hand, if the amount of DG energy is greater than the amount the utility supplies during a billing period, the customer receives an energy credit "for the excess kWh generated," which reduces the amount of energy the customer buys from the utility in the next billing cycle. A.A.C. R14-2-2306(D).

Under TEP's proposal, however, none of the power that customers generate and deliver to the grid "may be used to offset electric energy provided by" TEP. A.A.C. R14-2-2302. Instead, TEP would provide customers with a bill credit at its proposed Renewable Credit Rate for all DG energy customers provide. Application at 6-8. TEP's proposal thus eliminates customers' ability to net their exported against the energy they receive from the Company. Put simply, new "net metering" customers would not have the option to net meter.

A key aspect of TEP's proposal, which TEP does not discuss in its application, is the definition of "excess energy." TEP defines "excess generation" in its proposed new tariff as "[a]ll energy produced by the Customer's generator in excess of the Customer's consumption *at the time of the production*," which essentially means that all energy that customers produce beyond the amount they consume instantaneously is excess energy. TEP's Supplement to Application at 5 (emphasis added). This is a departure from the meaning in TEP's current tariff and the rules, in which excess generation means customer generation in excess of utility-supplied energy during a billing period. *See id.* at 8-9; A.A.C. R14-2-2306(C). The result is that under

TEP's proposal, all energy that DG customers provide would be tracked throughout the billing period as excess generation, and credited at the Renewable Credit Rate. Structured this way, the service outlined in TEP's tariff does not meet the Commission's definition of "net metering" nor does it comply with the billing requirements provided for in the net metering rules.

Recognizing that its proposal runs counter to the Commission's net metering rules, TEP has requested a "partial waiver" from the Commission's net metering rules. Application at 1. TEP's request should be rejected for several reasons. First, unlike other articles in Title 14 of the Arizona Administrative Code, the Commission's net metering rules do not contain a waiver provision.[7] If the Commission intended to allow utilities to seek waivers from its net metering rules it would have said so, as it did elsewhere. *See, e.g.*, *Ariz. Dep't of Revenue v. Gen. Motors Acceptance Corp.*, 937 P.2d 363, 367 (Ariz. Ct. App. 1996) ("Where the legislature has used a particular term in one place in a statute and has excluded it in another place in the same statute, a court should not read that term into the provision from which the legislature has chosen to omit it.").

Second, TEP's waiver request is misleading. TEP states that it seeks a waiver because it "will no longer be rolling over excess generation to offset future usage – which is different than what is set forth in A.A.C. R14-2-2306." Application at 8. However, as explained above, TEP's proposal does not simply substitute a bill credit for an energy credit for any customer generation that exceeds utility-supplied energy in a given month. Rather, TEP's proposal would bar customers from using the energy they export to offset the energy they receive from TEP. Thus, "net metering," as defined by Commission rule, could not occur.

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[7] *See, e.g.*, A.A.C. R14-2-806 (waiver provision for article addressing public utility holding companies and affiliated interests); A.A.C. R14-2-2419 (same for electric energy efficiency standards); A.A.C. R14-2-2520 (same for gas utility energy efficiency standards); A.A.C. R14-2-1311 (same for telecommunications interconnection and unbundling); A.A.C. R14-2-1816 (same for renewable energy standard and tariff).

Finally, even if available, a waiver is improper in light of the impact of TEP's proposal and the underlying issues TEP seeks to address. TEP should not be permitted to waive the provision of net metering services to its customers and, as discussed above, TEP's core concerns that led to this proposal should be addressed in a rate case.

For the foregoing reasons, Vote Solar respectfully recommends that the Commission dismiss TEP's application.

DATED this 15th day of May, 2015.

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ORIGINAL and 13 COPIES of
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All Parties of Record

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